

**Title VI Guidance Comments  
Office of Civil Rights  
U.S. Environmental Protection Agency**

**Comments of  
The AES Corporation  
And Its Subsidiaries  
Involved in U.S. Business  
on the Draft Title VI Guidance for EPA Assistance Recipients  
Administering Environmental Permitting Programs and  
Draft Revised Guidance for Investigating Title VI  
Administrative Complaints Challenging Permits**

*submitted to*  
**The U.S. Environmental Protection Agency  
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AES Corporation and its subsidiaries involved in United States business ("AES") appreciate the opportunity to comment on EPA's Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits. 65 Fed. Reg. 39650 (June 27, 2000). AES is an independent public power producer that owns or has an ownership interest in 128 facilities around the world, with a total generating capacity of more than 44 gigawatts.

AES understands the importance of assuring that discriminatory effects do not result from the issuance of environmental permits and endorses the objective of refining and streamlining the procedures for determining whether environmental permits issued by state and local permitting authorities meet the requirements of Title VI. Further, AES believes that the draft guidance documents published in June are more likely to clarify the procedures than EPA's 1998 Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits would have been.

However, one issue of significant concern in the 1998 Interim Guidance has not been remedied in the current draft guidance. EPA must commit to notifying the permittee as well as the permitting authority when it receives a Title VI complaint. Often, a permittee will have pursued the challenged permit over many years, made a tremendous investment in the development of the project, concluded a financial closing and/or commenced construction of the project. Considering that the permittee's interests are very much at stake in these proceedings, it is entirely inappropriate that the draft guidance contains no provision for notifying the permittee upon the filing of the complaint or upon the determination to proceed with investigation. The permittee should be aware of the proceeding and have the opportunity to offer information in the course of the EPA investigation and should be able to defend against allegations of disparate impact.

For the reasons expressed, AES strongly recommends that EPA revise the draft guidance to commit to providing notice to the permittee upon the filing of a Title VI complaint.